

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **10-N-01856-LMA**
) (10-N-01871-LMA)
PATIENCE NOONEY VAN ZANDT,)
) **DECISION & ORDER OF**
Member No. 179151,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT¹**
A Member of the State Bar.)

I. Introduction

In this rule 9.20 proceeding, which proceeded by default, Deputy Trial Counsel Christine Souhrada appeared for the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar). Respondent **PATIENCE NOONEY VAN ZANDT²** did not appear in person or by counsel.

In the notice of disciplinary charges (hereafter NDC), the State Bar charges that respondent willfully failed to comply with California Rules of Court, rule 9.20 (hereafter rule 9.20) as ordered in (1) the review department's December 11, 2009 interim suspension order in *In the Matter of Patience Nooney VanZandt*, State Bar Court case number 09-C-17808 (hereafter *VanZandt I*) and (2) the review department's December 11, 2009 interim suspension order in *In*

¹ The Rules of Procedure of the State Bar of California were amended effective January 1, 2011. The court orders the application of the former Rules of Procedure of the State Bar in this proceeding because it has determined that injustice would otherwise result. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 3.)

² Respondent was admitted to the practice of law in this state on December 11, 1995, and has been a member of the State Bar of California since that time. She has no prior record of discipline.

the Matter of Patience VanZandt, State Bar Court case number 09-C-17877 (*VanZandt II*).

Specifically, the State Bar charges that respondent filed her rule 9.20(c) compliance declarations in *VanZandt I* and *VanZandt II* late.³

As set forth *post*, the court finds that respondent filed her two rule 9.20(c) compliance declarations late as alleged in the NDC and concludes that the appropriate level of discipline is disbarment. Accordingly, the court will recommend that respondent be disbarred and will order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding (Bus. & Prof. Code, § 6007, subd. (c)(4)).⁴

II. Pertinent Procedural History

On July 27, 2010, the State Bar filed the NDC in this proceeding and, in accordance with section 6002.1, subdivision (c), served a copy of the NDC on respondent by certified mail, return receipt requested, at her latest address shown on the official membership records of the State Bar (hereafter official address). Thereafter, the United States Postal Service (hereafter Postal Service) did not return, to the State Bar as undeliverable or otherwise, the copy of the NDC that was served on respondent. Nor did the Postal Service return, to the State Bar, the return receipt (i.e., the “green card”) for the service copy of the NDC. Nonetheless, service of the NDC on respondent was deemed complete when mailed even if she never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

³ Rule 9.20(c) provides: “Within such time as the order may prescribe . . . , the member must file with the Clerk of the State Bar Court [a declaration] showing that he or she has fully [performed the acts specified in rule 9.20(a)]. The [declaration] must also specify an address where communications may be directed to the disbarred, suspended, or resigned member.”

⁴ Unless otherwise noted, all further statutory references are to the Business and Professions Code.

Respondent's response to the NDC was to have been filed no later than August 23, 2010. (Former rule 103(a), Rules Proc. of State Bar; see also former rule 63, Rules Proc. of State Bar.) Respondent, however, did not file a response. And, on September 16, 2010, the State Bar filed a motion for the entry of respondent's default. Thereafter, respondent did not file a response to that motion or to the NDC.

On October 4, 2010, the court filed an order entering respondent's default and, as mandated by section 6007, subdivision (e)(1), ordering that she be involuntarily enrolled as an inactive member of the State Bar effective October 7, 2010. In its October 4 order, the court also ordered that the present case (i.e., case number 10-N-01856-LMA)⁵ be consolidated with *VanZandt I*.

On October 22, 2010, the State Bar filed, in the consolidated proceeding, a brief on culpability and discipline and a request for waiver of default hearing. And the court took the consolidated proceeding under submission for decision without a hearing on October 26, 2010.

Then, on November 8, 2010, the court filed an order in which it (1) vacated the October 26, 2010 submission of the consolidated proceeding; (2) severed the present case (i.e., case number 10-N-01856-LMA) from *VanZandt I*; *VanZandt II*; and case numbers 09-C-17876-LMA and 10-C-01059-LMA; (3) abated *VanZandt I*; *VanZandt II*; and case numbers 09-C-17876-LMA and 10-C-01059-LMA; and (4) took the present case back under submission for decision without a hearing.

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⁵ Of course, case number 10-N-01856-LMA includes correlated case number 10-N-01871-LMA.

III. Findings of Fact and Conclusions of Law

Under section 6088 and former rules 200(d)(1)(A) and 201(c) of the Rules of Procedure of the State Bar, upon the entry of respondent's default, the factual allegations (but not the charges or conclusions) set forth in the NDC were deemed admitted and no further proof was required to establish the truth of those facts. Accordingly, the court adopts the facts alleged (but not the charges or the conclusions) in the NDC as its factual findings.

A. Culpability

On December 11, 2009, a State Bar Court case administrator mailed copies of the review department's December 11, 2009 interim suspension orders in *VanZandt I* and *VanZandt II* to respondent at her then official address by first class mail with postage prepaid.

The review department's December 11, 2009 interim suspension order in *VanZandt I* has continuously been in effect since it was filed. Moreover, in that order, the review department ordered that respondent be suspended from the practice of law effective December 18, 2009, and that respondent comply with rule 9.20 and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after December 18, 2009. Thirty days after December 18, 2009, was January 18, 2010, and forty days after December 18, 2009, was January 27, 2010. Thus, respondent was required to perform the acts specified in rule 9.20(a) no later than January 18, 2010, and to file the declaration (or affidavit) of compliance required in rule 9.20(c) with the State Bar Court Clerk no later than January 27, 2010. Of course, respondent was required to file a rule 9.20(c) declaration of compliance in *VanZandt I* even if she had no law practice, clients, or pending cases as of December 11, 2009 (i.e., the date on which the review department's order directing respondent to comply with rule 9.20 was *filed*). (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

The review department's December 11, 2009 interim suspension order in *VanZandt II* has continuously been in effect since it was filed. In that order, the review department ordered that respondent be suspended from the practice of law effective January 6, 2010, and that respondent comply with rule 9.20 and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after January 6, 2010. Thirty days after January 6, 2010, was February 5, 2010, and forty days after January 6, 2010, was February 15, 2010. Thus, respondent was required to perform the acts specified in rule 9.20(a) no later than February 5, 2010, and to file the declaration (or affidavit) of compliance required in rule 9.20(c) no later than February 15, 2010. Of course, respondent was required to file a rule 9.20(c) declaration of compliance in *VanZandt II* even if she had no law practice, clients, or pending cases as of December 11, 2009 (i.e., the date on which the review department's order directing respondent to comply with rule 9.20 was filed). (*Powers v. State Bar, supra*, 44 Cal.3d at p. 341.)

Respondent filed her rule 9.20(c) compliance declarations in *VanZandt I* and in *VanZandt II* on March 23, 2010. Accordingly, in *VanZandt I*, respondent filed her compliance declaration 55 days late, and in *VanZandt II*, respondent filed her compliance declaration 36 days late.

In the context of rule 9.20, the term "willful" does not require bad faith or even actual knowledge of the provision violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) In fact, the Supreme Court disbarred an attorney whose failure to keep his State Bar official address current prevented him from learning that he had been ordered to comply with former rule 955 (which is the predecessor of rule 9.20). (*Powers v. State Bar, supra*, 44 Cal.3d at pp. 341-342.) In sum, the court holds that respondent willfully violated rule 9.20(c) in both *VanZandt I* and in *VanZandt II* by filing her compliance declarations late as charged in the NDC. (Rule 9.20(d).)

In the NDC, the State Bar also charges respondent's failures to timely file her compliance declarations as violations of her duty, under section 6103, to obey court orders "requiring [her] to do or forbear an act connected with or in the course of [her] profession, which [she] ought in good faith to do or forbear." The court cannot agree. Without question, the appropriate level of discipline for an act of misconduct does not depend on how many rules or statutes proscribe the misconduct; therefore, it is unnecessary, if not inappropriate, to find redundant/duplicative violations. (*In the Matter of Van Sickle* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 980, 992; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Therefore, the charged violations of section 6103 are dismissed with prejudice because they are redundant of the found rule 9.20(c) violations.

B. Aggravation

Respondent's failure to file a response to the NDC in the present proceeding, which allowed her default to be entered, is an aggravating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(vi);⁶ *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805; *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109.)

C. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) There is no evidence of any mitigating circumstance.

IV. Discussion

In determining the appropriate level of discipline, the court ordinarily looks to the standards first (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and to caselaw second (*Snyder v. State*

⁶ All further references to standards are to this source.

Bar (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580). However, as the review department aptly noted more than 14 years ago, the standards do not address the appropriate level of discipline for violating rule 9.20. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Instead, rule 9.20(d) does. In that regard, rule 9.20(d) provides, in relevant part, that an attorney's willful failure to comply with rule 9.20 constitutes cause for disbarment or suspension and for revocation of any pending probation.

Moreover, at least in the absence of *compelling* mitigating circumstances, case law makes clear that the most consistently imposed sanction under rule 9.20(d) is disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296, and cases there cited.) Among other things, a suspended attorney's *timely* compliance with rule 9.20(a) performs the critical function of ensuring that all concerned parties, including clients, cocounsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's actual suspension and consequent disqualification to act as an attorney. When an attorney files his or her rule 9.20(c) compliance declaration late, the review department cannot readily determine whether this critical notification function has been promptly performed. In addition, timely compliance with rule 9.20(c) is necessary to ensure that the State Bar Court and the Supreme Court are apprised of the location of attorneys who are subject to their disciplinary authority. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent's unexplained failures to timely file her rule 9.20(c) declarations of compliance strongly suggest a conscious disregard for this court's and the Supreme Court's efforts to fulfill their respective responsibilities to oversee the practice of law in the State of California. Finally, there are no mitigating circumstances, much less compelling mitigating

circumstances, that would warrant a departure from the ordinary sanction of disbarment under rule 9.20(d).

V. Discipline Recommendation

The court recommends that respondent **PATIENCE NOONEY VAN ZANDT** be disbarred from the practice of law in the State of California and that her name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

VI. Rule 9.20 & Costs

The court further recommends that Patience Nooney Van Zandt be again ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Patience Nooney Van Zandt be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)(1)).

Dated: January ____, 2011.

LUCY ARMENDARIZ
Judge of the State Bar Court